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Amendment after Final  
Attorney Docket No. S63.2B-9867-US01

#### Remarks

This Amendment is in response to the Final Office Action dated November 2, 2005. Claims 1-4, 6-10, 14, 15, 38, 41, 42, and 45 were rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/41649 to Kocur et al. Claims 30, 33, 34, and 44 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kocur '649 in view of U.S. Patent No. 5,843,158 to Lenker et al. Claims 11-13 were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/41649 to Kocur in view of U.S. Patent No. 5,591,223 to Lock et al. Claims 35-37, and 39-40 were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/41649 to Kocur in view of Lenker et al. and further in view of Lock et al. These rejections are addressed under headings consistent with the headings of the Office Action. Claims 1, 6, 7, 30, and 33-38 have been amended. No new matter has been added.

#### 35 USC § 102

In the Final Office Action claims 1-4, 6-10, 14, 15, 38, 41, 42, and 45 were rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/41649 to Kocur et al. Claim 1 recites "a frangible temporary strut". In responding to the arguments of the previous Amendment of August 11, 2005, the Final Office Action states that "Kocur discloses that the retaining segments may be disposed between struts. These segments will act as struts until the members are severed..." However, the issue is that the retaining members in the instant application are *identified* as "struts" (please note page 6, line 21 of the specification) and struts have known characteristics. A strut is known in the art as a structural element used to support a framework.

This is simply not taught in Kocur. Kocur teaches frangible bands or the like rather than a strut that is frangible as taught in claims 1 and 38. Furthermore, the response in the Final Office Action is adding characteristics to the bands of Kocur that are not taught in Kocur, "*These segments will act as struts until the members are severed*". This assertion in the Final Office action is speculative and is simply not disclosed in Kocur. The frangible bands of Kocur do not provide support to a framework, and must not be viewed as a strut.

For at least the above reasons, independent claims 1 and 38 and claims 2-4, 6-10, 14, 15, 41, 42, 44, and 45 dependent thereof overcome the 102 rejection.

Applicant respectfully requests that the 102 rejection in light of Kocur be

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withdrawn.

### 35 USC § 103

In the Final Office Action, claims 30, 33, 34, and 44 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kocur '649 in view of U.S. Patent No. 5,843,158 to Lenker et al. Claim 30 has been amended to recite "a generally non-woven tubular body having interconnected struts which form at least one continuous pathway which extends around the longitudinal axis".

The Final Office Action acknowledges that Kocur does not disclose restraining members being made of metal. In addition, as asserted above, Kocur does not teach nor does Kocur suggest frangible *struts*. The Final Office Action looks to the woven stent of Lenker to provide a teaching that the frangible restraining member is made of metal. Amended claim 30 claims a non-woven tubular body. The metal in the frangible elements of Lenker are fibers that are woven. One skilled in the art would not look to the woven stent art to find the frangible temporary struts of the non-woven stents of independent claim 30. For at least this reason, Applicant respectfully requests that the 103(a) rejection of claim 30 and claims 33, 34, and 44 dependent thereof be withdrawn.

Claims 11-13 were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/41649 to Kocur in view of U.S. Patent No. 5,591,223 to Lock et al. Claims 11-13 claim dependence from independent claim 1 which recites "a frangible temporary strut". As asserted above Kocur does not teach a frangible temporary strut. This missing limitation is not taught or suggested in Lock. For at least this reason, claims 11-13 are allowable as they claim dependence on claim 1 which is believed to be in condition for allowance. Applicant respectfully requests that the 103(a) rejection of claims 11-13 be withdrawn.

Claims 35-37 and 39-40 were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/41649 to Kocur in view of Lenker et al. and further in view of Lock et al. Claims 35-37 claim dependence from independent claim 30 and claim 39-40 claim dependence from independent claim 38. Claims 30 and 38 both recite "a frangible temporary strut" and "a non-woven stent", while claim 30 recites "the frangible temporary strut at least partially constructed from metal".

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As asserted above, Kocur does not teach nor does Kocur suggest frangible temporary struts. The Final Office Action looks to Lenker to provide a teaching that the frangible restraining member is made of metal. However, the Lenker reference teaches woven stents and fibers. One skilled in the art would not look to the woven stent art to find the frangible temporary struts of the non-woven stents of independent claim 30 and 38. Furthermore, Lock neither teaches nor suggests these missing elements of claims 30 and 38. For at least the reason that claims 35-37 and 39-40 claim dependence on claims believed to be in condition for allowance, Applicant respectfully requests that the 103(a) rejection of claims 35-37 and 39-40 be withdrawn.

#### CONCLUSION

In view of the foregoing it is believed that the present application, with pending claims 1-15, 30, 33-42, 44, and 45, is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

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